JUDICIAL DECISIONS ON PUBLIC LAW

ROBERT E. CUSHMAN

University of Illinois

Contracts for Public Supplies—Validity of Exclusion of Nonresident Bidders. State v. Senatobia Blank Book and Stationery Co. (Mississippi, July 9, 1917, 76 So. 258). A law forbidding county boards of supervisors to let contracts for stationery to any bidders who are not residents of the state is a reasonable police regulation designed to make sure that those who do work for the state shall be amenable to the jurisdiction of its courts. Its affect upon interstate commerce is too incidental to constitute undue interference with such commerce. Since no printer or stationer has any constitutional right to work for the state those against whom the statute discriminates cannot claim that their privileges and immunities as citizens have been impaired, or that they have been deprived of liberty or property without due process of law or denied the equal protection of the law.

Intoxicating Liquors—Constitutionality of Prohibition Statute. Pine v. Commonwealth (Virginia, September 20, 1917, 93 S. E. 652). The prohibition statute of Virginia, passed in 1916, was an elaborate act forbidding the manufacture, sale, keeping for sale of intoxicating liquors, as well as several incidental acts, and providing machinery for enforcement. The validity of this law was attacked on the ground that the prohibition clause of the state constitution provided merely that the general assembly should have full power to enact laws "prohibiting the manufacture or sale of intoxicating liquors." No express authority is given to forbid "keeping for sale" or anything else except manufacturing and selling. On the theory that the enumeration of certain powers is the exclusion of others it was argued that the legislature had exceeded the limits of its authority in passing the act in question. The court decided that the constitutional clause cited is permissive only and does not operate to take away any of the absolute power of the legislature over the whole subject of intoxicating liquors.

Jurisdiction—Crime of Commander of Public Vessel of Friendly Nation in American Port. United States v. Thierichens (U. S. District Court, March, 1917, 243 Fed. 419). The defendant was the commanding officer of a German cruiser in an American port prior to the outbreak of war with Germany. He was indicted for violation of the federal white slave act and also for smuggling. He contended that as commander of a public armed vessel of a friendly nation he was not subject to the jurisdiction of the courts of this country. The court decided, however, that the immunity claimed extends only to the acts of such an officer while acting in his official capacity as an agent of his government. To claim that the defendant was acting as a German commanding officer in violating the white slave act "lends dignity to an absurdity." Nor was there evidence to show that he was acting for his government in smuggling. The United States court was held to have jurisdiction over him.

Minimum Wage—Constitutionality. State v. Crowe (Arkansas, June 4, 1917, 197 S. W. 4). The Arkansas minimum wage law required the payment of $1.25 per day to female workers having six months experience in any line of industry and $1 per day to those with less experience. This law does not violate the due-process clause of the fourteenth amendment by unduly interfering with the freedom of contract of employers and employees. Two lines of cases are relied upon in support of this view. In the first group are the decisions upholding limitations of the hours of labor of women. In the second place, the cases holding valid laws forbidding the employment of women in saloons indicate that the police power may resort to various discriminations in behalf of women. The court takes judicial notice of the fact that the health and morals of women as well of the virility of their children are jeopardized by insufficient wages. All the arguments in support of the laws limiting the hours of labor of women apply with equal force to a minimum wage statute.

Monopoly under Sherman Act—Selling Losing Business to Sole Competitor. American Press Association v. United States (U. S. District Court, August 25, 1917, 245 Fed. 91). It is not a violation of the Sherman Act for a corporation which is running a losing business to sell that business to its only competitor in the field instead of disposing of its plant as junk. "Not every joinder of competing businesses or acquisition of instrumentalities that have been used in competition is

an undue restraint of trade or a creation of a monopoly." The rule of reason must be applied in such cases and the best way of testing the legitimacy of such an act is by the injury to the public which it involves. No such injury could be shown in this case.

Public Utility—Cotton Gin—Illegal discrimination among patrons. Tallassee Oil and Fertilizer Co. v. Holloway (Alabama, June 21, 1917, 76 So. 434). It is unlawful for the owner of a cotton gin who undertakes to gin for the public to refuse to gin the cotton of persons who refuse to sell him the seed. A commercial cotton gin is a public utility and subject to regulation by the state. The practice described amounts to discrimination among the patrons of the gin and also tends to create a virtual monopoly of the cotton seed business. It is contrary to public policy and may be permanently enjoined.

Rural Credit—Constitutionality. Schaaf v. South Dakota Rural Credit Board (South Dakota, October 27, 1917, 164 N. W. 964). The South Dakota rural credits law of 1917 was passed under authority of a constitutional amendment adopted the year before relating to that subject. While this amendment was necessary to make such an act constitutionally possible it had the effect of removing completely the constitutional disabilities which previously existed. The nature of the rural credits system indicates the absence of any intention to bring its operation within the scope of the $100,000 state debt limit. The classification of the land in the state into urban and rural and the establishment of a rural credits system which directly benefits only the latter class of land is not arbitrary and unreasonable discrimination and does not deny to urban citizens the equal protection of the law.

Teachers' Pensions and Insurance—Constitutionality. State v. Hauge (North Dakota, July 28, 1917, 164 N. W. 289). The act in question required the county treasurer to set aside from the "county tuition fund" ten cents for each child of school age in the county, to be sent to the state treasurer to constitute a teachers' pension and insurance fund. This is not an unconstitutional diversion of local funds to a general state purpose since the county school moneys are raised by the state taxing power and are subject to state control. There is ample authority, supported by long continued usage, that money paid out in pensions is spent for a public purpose and teachers' pensions are further justified as suitable aids in the maintenance of the public school

system. They are to be regarded as additional salary allowances to public servants and are not forbidden by the constitutional prohibition against donations of state money to individuals.

War Problems. *Conscription Act—Constitutionality.* United States v. Sugar (U. S. District Court, July 10, 1917, 243 Fed. 423); Story v. Perkins (U. S. District Court, August 20, 1917, 243 Fed. 997). These cases uphold the constitutionality of the conscription act. In the case of United States v. Sugar the court considers and disposes of a rather wide range of attacks upon the validity of the law. In the first place conscription does not subject the drafted man to "involuntary servitude." The thirteenth amendment is aimed at enforced labor between individuals and does not forbid the compelling of public service to the state. It is useless to urge, in the second place, that the exemptions provided for by the act make it class legislation since there is no constitutional prohibition against class legislation by the national government. Third, it is unnecessary that any appeal should lie to the civil courts of the United States from the decisions of the draft exemption boards since those boards are military courts and the authority to organize them comes from the grant of congressional power over the army and navy rather than from the judicial article of the Constitution. Fourth, the statute does not confer legislative and judicial power on the President but merely empowers him to fill in the details of a law already complete in order to make it practically effective. In the fifth place, the conscription act did not involve an exercise of power not granted to congress by the Constitution since it establishes compulsory military service, inasmuch as conscription is a reasonable means of exercising the specifically delegated power to raise and support armies. Finally, the act does not contravene the clause of the Constitution allowing congress to call forth the militia "to execute the laws of the union, suppress insurrections, and repel invasions." It does not call forth the militia but instead it drafts the members into the national army and discharges them from the militia. This the national government has a right to do despite the previous membership of the drafted men in the national guard.

The opinion of the case of Story v. Perkins touches briefly upon the first and last points just mentioned and in addition considers the objection that the conscription act deprives a person of his common law right to remain within the realm. It is pointed out that an act of congress cannot be declared void because it is inimical to the common